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IN THE HON'BLE CHHATTISGARH HIGH COURT AT BILASPUR

WRIT PETITION NO.. 105 /2003 (S.B.)

PETITIONER

Kumari Neelam Nigam, aged about 27 years, Daughter Shri Mataprasad Nigam, Asstt. Teacher - Government Girls Higher Secondary School No.2, Jagdalpur, Resident of - behind Krishna Petrol Pump, Jagdalpur, Distt. Bastar (Chhattisgarh)

P. R. No. 1201/03
Presented by Shri Avinash K. Mishra
dated 13-07-2003

VERSUS

RESPONDENTS

- 1) State of Chhattisgarh, through : Secretary, School Education Department, D.K.S. Mantralay, Raipur (Chhattisgarh).
- 2) The State of Chhattisgarh, through : Secretary, Tribal Welfare, D.K.S. Bhawa, Mantralay, Raipur (Chhattisgarh)
- 3) Collector, (Tribal Development Branch), Jagdalpur, Distt. Bastar (Chhattisgarh).



WRIT PETITION UNDER ARTICLES 226/227 OF THE
CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 185 OF 2003

Kumari Neelam Nigam

Vs.

State of Chhattisgarh & Others

Shri P.K.C. Tiwary, Counsel for the petitioner.

Shri Yashwant Singh, Govt. Advocate for the State.

Per Fakhruddin, J

O R D E R

(Dated 7th / January, 2005)

Heard learned counsel for the parties.

2. The petitioner has preferred the petition under Articles 226/227 of the Constitution of India, being aggrieved by the inaction on the part of the respondent authorities in providing the benefits of M.P. Revision of Pay Rules, 1990, in compliance of the report of the 5th Pay Commission and arbitrarily fixing condition of basic training for entitlement for regularization.

3. Briefly stated the facts of the case are that the petitioner was appointed as an Assistant Teacher on a fixed pay of Rs.1200/- vide order dated 14-2-1994

(Annexure-P/2) under the category of handicapped candidates.

4. Shri Tiwary, learned counsel for the petitioner submitted that the petitioner is having permanent disablement in the lower limb of right leg to the extent of 60% as an after affect of Polio and certificate to this effect is Annexure - P/3. He further submitted that the petitioner had applied in November, 2001 for exempting her from the condition of completion of basic training and in the alternative made a submission that she be provided at least basic pay of Rs.4000/- in accordance with the recommendations of 5th Pay Commission, which has been adopted by the State.

5. It is contended that respondent No.3 without considering the relevant provisions passed an order dated 1-12-2001 (Annexure-P/6) wherein it was stated that the prayer for regularization will be considered if she completed the basic training within three years and she will be entitled to get the benefits after completion of the training and this has been challenged by the petitioner in the instant petition.

6. Shri Singh, learned Govt. Advocate submits that return has been filed by the State taking all factors into consideration.

7. Shri Tiwary, learned counsel for the petitioner, contended that in view of the submission made by the respondents in para 17 of the return the petitioner is entitled to get the said benefits. Para 17 of the return submitted by the respondents is quoted below :

"17. Even otherwise, although the petitioner is claiming fixed remuneration @ Rs.4000/- per month as per the 5th Pay Commission Report, but as per the rule even if the relief is granted to her @ Rs.4000/- per month is allowed for the period 1.1.1996 to 31.12.1997 the said amount would be deposited in the G.P.F. Account of the petitioner and she will be entitled for Rs.4000/- per monthly only w.e.f. 1.1.1998 and not otherwise."

8. Learned counsel for the petitioner contended that for the present the petitioner may be given the relief as stated in para 7 of the petition and she may also be given an opportunity to make a detailed representation before the competent authority of the respondents regarding exemption from the condition of completion of basic training.

9. It is also submitted that though the petitioner is handicapped, she has now joined the training. It is also contended that so far as the relief of regularization is concerned, the petitioner may be allowed to withdraw the petition with liberty to file afresh in case cause of action still subsists.

10. The prayer made by learned counsel for the petitioner is not opposed by learned State counsel.

11. In view of the submission made by learned counsel for the parties, the petitioner be given the benefits as admissible and as stated in para 17 of the return and for the remainder she may make a detailed representation before the competent authority of the respondents along with a copy of this order, within a month, and on such representation being filed, the competent authority of the respondents shall decide the same on its own merits in accordance with law as early as possible preferably within three months from the date of receipt of the representation. It is made clear that if any grievance still remains, the petitioner may avail the remedy available under the law.

12. With the aforesaid observations the petition stands disposed of with the aforesaid liberty.

13. Consequently, M.W.P.No.1683/04, I.A.Nos. 4414/04 and 4423/04 also stand disposed of.

14. Parties are entitled certified copy of this order as per rules.

Sd/-
Fakhruddin
Judge

7-1-2005

Gowri